M/S. Onkarlal Nandlal

Vs

State of Rajasthan and Another

Civil Appeals Nos. 207-08 of 1983 and 2543, 3021-3030-A, 5611-17, 3031 and 4751 of 1982

(CJI P. N. Bhagwati, R. S. Pathak, A. N. Sen JJ)

23.09.1985

JUDGMENT

BHAGWATI C.J. -

1. These appeals by special by special leave raise a short question of construction of certain provisions of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as the State Act). It is a pure Question of law and does not depend for its determination on the distinctive facts of any particular case out of this group of appeals but in order to arrive at a proper determination, it is necessary to consider this question in its proper perspective an therefore the board constellation of facts in which the question arises may be briefly stated.

2. We will confine ourselves only to the facts of Civil Appeals 207-208 of 1983 for the facts of this appeal are broadly similar to the facts of the other appeals comprised in this group. The assessee is partnership firm which carries on business in gains, oil seeds, poppy seeds, etc., in Bhawani Mandi in District Jhalawar in the State of Rajasthan. The assessee is a registered dealer under the provisions of the State Act and is also registered as a dealer under the provisions of the Central Sales Tax Act, 1956 (hereinafter referred to Central Act). The assessment year with which we are concerned in this appeal are assessment years 1975-76 and 1976-77. During these two assessment years, purchased poppy seeds against Declarations in Form No. ST 17 furnished to the selling dealers. These Declarations in Form No. ST 17 stated that the assessee was purchasing the poppy seeds for the purpose of the resale within the state. The assessee, after purchasing the poppy seeds against these Declarations, resold the same to different buyers under contracts executed by and section the assessee and the buyers at Bhawani Mandi. It was not disputed that at the date when these contracts were made between the assessee and the buyers, the poppy seeds forming subject matter of the contracts were specific goods in deliverable condition situate in Bhawani Mandi and the property in the poppy seeds accordingly passed to the buyers under the contacts in Bhawani Mandi. The resales of poppy seeds to the buyers were therefore, according to the assessee, sales within the State and it could not be said that the poppy seeds purchased by the assessee were used by it for any purpose other than the one mentioned in the Declaration furnished by the assessee to the selling dealers. But while completing the assessment of the assessee to the sale tax for the assessment years 1975-76 and 1976-77, the Commercial Tax officers took the view that the resales of the poppy seeds effected by assessee were sales in the course of inter-state trade and commerce and were therefore the sales within the State and hence the poppy seeds purchases by the assessee were used for a purpose other than that mentioned in the Declarations furnished by the assessee to the selling dealers and consequently the purchase price of the poppy sees was liable to be include in the taxable turnover of the assessee. The Commercial Tax Officer accordingly passed two assessment orders on September 22, 1982, one for the assessment year 1975-76 and the other for the

assessment year 1976-77 and included the purchase price paid by the assessee for the poppy seeds in the taxable turnover of the assessee. The assessee thereupon preferred the present appeal by special leave directly to this Court.

3. Now at the outset we should like to make it clear that ordinarily we do entertain an appeal directly against an order made by an officer in the hierarchy, when there are other remedies by way of the appeal or revision provided to an assessee under the statue. Here the assessee could have preferred an appeal against the order of assessment made by the Commercial Tax Officer and he could have then gone in revision to the Board of Revenue and thereafter to the High Court under Article 226 or 227 of the Constitution and then, if he was aggrieved by the order passes by the High Court, he could come to this Court under Article 136. We would have ordinarily insisted on the assessee going through this hierarchy of judicial process and declined to entertained the petition for special leave directly against the order of the assessment made by the Commercial Tax Officer. But we were informed by the learned advocate appearing on behalf of the assessee, and this was not controverted by the learned advocate appearing on behalf of the Department, that the High Court in another case has already taken the view that when a resale is made by an assessee which which is in the course of inter-State trade or commerce, it cannot be regarded as a resale within the State and hence such resale would constitute a breach of the Declaration given by the assessee to the selling dealer so as to attract the applicability and the purchase price paid by the assessee would consequently be liable to be included in the taxable turnover of the assessee. It would therefore, argued the learned counsel for the assessee, be futile to drive the assessee to the procedure of the appeal and revision and then a write petition to the High Court. This contention urged on behalf of the assess had force and we accordingly granted special leave and entertained this appeal. Similarly we granted special leave in the other cases as well and hence those appeals are placed before as along with this appeal.

4. The short but interesting question that arises for consideration on these facts is : when am assessee purchases goods from a selling dealer against a Declaration in Form ST 17 stating that the goods are being purchased by him resale within the state and he then proceeds to resell the goods and such resale is in the course of inter-State trade or commerce, would such resale be liable to be regarded as a sale not within the State for the purpose of the Declaration in Form ST 17, merely because it is a sale in the course of inter-State trade and commerce. Would the character of such resale, namely, that it is a sale in the course of inter-State trade or commerce be inconsistent with its being also a sale within the state as contemplated in the Declaration in Form No. ST 17 ? The determination of this question depends on the true interpretation of a few relevant provisions of the State Act. Section 2 is the definition section and it defines various terms used in the State Act. Sub-section (o) of Section 2 defines sale to mean inter alia "any transfer of property in goods for cash or for deferred payment or for any other valuable consideration". There are two Explanation Section 2 sub-section (o). We need not refer to the first Explanation since it has no bearing on the issues arising in these appeals but the second Explanation is material and it may be reproduced as follows :

> A transfer of property in goods shall be deemed to have been made within the State if it fulfills the requirements of sub-sections (2) of Section 4 of the Central Sales Tax Act, 1956 (Central Act 74 of 11956).

"Sale price" is defined in Section 2 sub-section (p) to mean inter alia "the amount payable to a dealer as consideration for the sale of any goods less any sum allowed as cash discount". Then there is the definition of "turnover" in sub-section (t) of Section 2 and according to this definition, "turnover" means "the aggregate of the amount of sale prices, received or receivable by a dealer in

respect of the sale or supply of the goods in the carrying out of the contract". The expression "taxable turnover" is defined in sub-section (s) of the Section 2 and it provides inter alia that "taxable turnover" means "that part of turnover which remains after deducting therefrom the aggregate amount of the proceeds of sale of goods, which have been sold to persons outside the State for consumption outside the state". It is clear on a combined reading of these definitions that "taxable turnover" means the aggregate amount of the sale price received or receivable by a dealer in respect of sales of goods within the State. It is only sales of goods within the State which can taxed by the State Legislature. Clause (i) of Article 286 of the Constitution provides inter alia that no law of a state shall impose or authorised the imposition of a tax on the sale or purchase of the goods where such sale or purchase takes place outside the state clause (ii) of that article empowers Parliament to formulate principles for determining when a sale or purchase of goods can be said to have taken place outside the State. These principles have been formulated by Parliament in Section 4 of the Central Act which reads :

4. When is a sale or purchase of goods said to takes place outside a State. - (1) Subject to the provisions contained in Section 3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State such sale or purchase shall be deemed to have taken place outside all other States.

> (2) A sale or purchase of the goods shall be deemed to take place inside a state, if the goods are within the State -
>
> (a) in the case of specific or ascertained goods, at the time the contract of sale is made; and
>
> (b) In the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer whether assent of the other party is prior or subsequent to such appropriation.

Sub-section (2) of the Section 4 lays down the principles for determining when a sale or purchase of goods shall be deemed to take place inside the State. Once on the application of these principles set out in sub-section (2) of Section 4, it is determined that a sale or purchase of the goods has taken place inside a particular State, both according to general principles as also by the express words of sub-section (1) of Section 4 it must be deemed to have taken place outside all other states. Such sale or purchase can then be fixed only by the State in which it must be deemed to have taken place on the application of the principles set out in sub-section (2) of Section 4 and no other State can impose tax on such sale or purchase by reason of clause (i) of Article 286. Parliament has also in Section 3 of the Central Act formulated principles for determining when a sale or purchase of goods can be said to take place in the course of inter-State trade or commerce and in Section 5 of the Central Act principles have been formulated for determining when a sale or purchase of goods can be said to take place in the course of import or export. These principles were necessary to be formulated because a sale or purchase of goods in the course of inter-State trade or commerce cannot be taxed by a State on account Entry 92-A in List I of the Seventh Schedule of the constitution which sets out the topic of tax on sale or purchase of goods in the course of inter state trade or commerce within the exclusive legislative competence of parliament and so sale or purchase of goods in the course of import or export is concerned it is also not taxable by a State by reason of clause (i) of Articles 286. It is necessary to mentioned here that sub-section (1) of Section 4 opens with the words "Subject to the provides contained in Section 3", but when we turn to Explanation II to sub-section (0) of Section 2 of the State Act we find that what is incorporated in that sub-section is only subsection is

only sub-section (2) of section 4 and not sub-section (1) of Section 4 nor Section 3 or Section 5 of the Central Act.

5. Now the Declarations in Form No. ST 17 furnished by the assessee to the selling dealers uniformally stated that the goods were purchases by the assessee for the purpose of the resale within the state. The advantage of furnishing a Declaration in Form No. ST 17 is that the selling dealer would not be liable to pay sales tax on the sale effected by him against the Declaration and the assessee would not therefore have to pay to the selling dealer sales tax as part of the purchase price nor would the assessee be liable to pay any purchase tax on the purchase made by him on account of the saving enacted in Section 5-A of the State Act. But the second proviso to clause (iv) of sub-section (s) of Section 2 of the State Act provided as to what would be the consequence if an assessee purchase goods without paying any tax on the strength of a Declaration furnished by him and the goods are then used by him for a purpose other than the one mentioned in the Declaration. It enacts the following provision with a view to penalising an assessee who commits a breach of the statement made by him in the Declaration :

> Provided further that when any dealer has purchased any goods without paying any tax on the strength of any declaration furnished by him and the said, goods are used by him for any purpose other than the one mentioned in the declaration, the purchase price of such goods shall be included in his taxable turnover.

It was on the basis of this proviso that the Commercial Tax Officer sought to tax the assessee on the purchase price paid by it to the selling dealers on the ground that the assessee had not resold the goods within the State but had resold them in the course of inter-State trade or commerce and thus used the goods for a purpose other than that mentioned in the Declarations in Form No. ST 17. The question is whether this view taken by the Commercial Tax Officer is right.

6. The principal argument advanced on behalf of Department was that since the resales the effected by the assessee were admittedly sales in the course of inter-state trade or commerce they could not be said to be resales within the State as envisaged in the Declarations in Form No. ST 17 and the goods were therefore used by the assessee for a purpose other than that mentioned in the declarations. The department contended that if on an application of the principles set out in Section 3 of the Central Act, a sale was in the course of inter-state trade and commerce, it could not possibly be regarded as a sale within the State and in support of this m contention the Department relied on the opening words "subject to the provisions contained in Section 3" in sub-section (1) of Section 4 of the Central Act. The assessee on the other hand contended that though it was true that the resales effected by it were sales in the course of inter-State trade or commerce as defined in sub-section (3) of the Central Act, they were still sales with within the State in accordance with the principles formulated in sub-section (2) of Section 4 of the Central Act. The arguments of the assessee was that the resales effected by it being sales in the course of inter-State trade or commerce were not liable to be taxed by the State and could be taxed only by Central Government under the Central Act but that did not deprive the resales of their character of sales within the State which character attached to them by reason of sub-section (2) of Section 4 which was incorporated in the State Act by Explanation II to sub-section (o) of Section 2 of the State Act. The answer given by the assessee to the argument of the Department based on the opening words of sub-section (1) of Section 4 of the Central Act was that what was incorporated in Explanation II to sub-section (o) if Section 2 of the State Act was only sub-section (2) of Section 4 and not sub-section (1) of Section 4 of the Central Act and therefore the opening words in sub-section (1) of Section 4 had no impact on the provisions enacted in Explanation. These rival arguments raised an interesting question of interpretation and

though it is res integra so far as this Court is concerned we find that there are a large number of decision of various High Courts which have accepted the construction contended for on behalf of the assessee. We may refer only to a few of these decisions namely CST v. Godrej Soap Pvt. Ltd. ((1969) 23 STC 489), State of Orissa v. Johrimal ((1976) 37 STC 157) and Georgopoulos v. State of Maharashtra ((1976) 37 STC 187).

7. We may first clear the ground by staring facts which were not in dispute between the parties. There were two basic facts on which there was no dispute. One was that the resales effected by the assessee were sales in the course of inter-State trade or commerce within the meaning of Section 3 of the Central Act. The assessee did not dispute the correctness of this position. The second was that at the time when the contracts of resale were made by the assessee, the goods were specific ascertained goods situate in Bhawani Mandi, that is, within the State and on the principles formulated in sub-section (2) of Section 4 of the Central Act, the resales effected by the assessee were deemed to take place inside the State. The only question is whether by reasoning of the resales being in the course of inter-State trade or commerce, they ceased to be sales the State. We do not think the answer to this question admits to any serious doubt. There is in our opinion, no antithesis between a sale in the course of inter-State trade or commerce and a sale inside the State. Even an intre-State sale must have a situs and the situs may be in one State or another. It does not involve any contradiction in saying that an inter-State sale or purchase in inside a State or outside it. The situs of a sale may fall for consideration from more than one point of view. It may be required to be considered for the purpose determining its exigibility to tax as also for other purposes such as arising in the present case. Of course a sale which is in the course of inter-State trade or commerce cannot be taxed by a State Legislature even if its situs is within the State, because the State legislature has no legislative competence to impose tax on the sale in the course of inter-State trade or commerce. That can be done only by the parliament. If therefore a question arises whether a sale is exigible to tax by State Legislature, it may have to be considered whether it is a sale in the course of inter-State trade or commerce. The same sale in another context may have to be examined from a different point of view for determining where it situs lies and whether it is a sale inside the State or outside the State. There is therefore no incompatibility in the same sale being both a sale in the course of inter-State trade or commerce within the meaning of Section 3 of the Central Act as also a sale inside the State in accordance with the principles laid down in sub-section (2) of Section 4 of the Central Act.

8. Now let us turn to considered the purpose mentioned in the Declarations is Form No. ST 17 furnished by the assessee to the selling dealers. The purpose for which the goods were purchased by the assessee was stated in the Declaration to be "resale with the state" in Form No. ST 17 must bear the same meaning it has in the State Act. Form No. ST 17 has been prescribed by the State Government in exercise of the power conferred under Section 26 of the State Act and it is a recognised canon of construction that an expression used in a rule, by law or form issued in exercise of power conferred by a statue must, unless there is anything repugnant in the subject or context have the same meaning as is assigned to it under the statue. The expression "resale within the State" in Form No. ST 17 must therefore be read in the light of Explanation II to sub-section (o) of Section 2 of the State Act which lays down as to when a sale shall be deemed to have been made within the State and this provision in Explanation must govern the determination of what is "resale within the State" within the meaning of that expression us used in Form No. ST 17.

9. That takes us to a consideration of Explanation II to sub-section (o) of Section 2 of the State Act. This Explanation enacts as to when a sale shall be deemed to be a sale within the State by reference to sub-section (2) of Section 4 of the Central Act. If a sale fulfils the requirements of sub-section (2)

of Section 4 of the Central Act, it shall be deemed to be a sale within the State and it will be so also for the purpose of the Declaration in Form No. ST 17. It is with reference to the requirements of sub-section (2) of Section 4 that we shall have to judge whether the resales effected by the assessee were sales within the state. But before we do so, it would be convenient at this stage to refer to the argument of the Department based on the opening words "Subject to provisions contained in Section 3" in sub-section (1) of Section 4 of the Central Act. The Department argued that since the enactment in sub-section (1) of section 4 is expressly made subject to the provision contained in Section 3, the latter provision must override the former and therefore, once it is found on an application of the principles formulated in Section 3 that a sale is in the course of inter-State trade or commerce, the provision enacted in Section 4 would have no application and it cannot be said, of such a sale that it is a sale inside the State. This argument of the Department suffers from an obvious fallacy. In the first place, all that the opening words "Subject to the provisions contained in Section 3" intend to convey is that even where a sale is determined in accordance with sub-section (2) of Section 4 to take place inside a State and therefore outside all other States, it would not exclude the applicability of Section 3 and if it satisfies the requirements of the section, it would still be a sale in the course of inter-State trade or commerce taxable under the provisions of the Central Act,. Secondly we are not concerned here with the interpretation of sub-section (1) or sub-section 4 in the context of Section 3 of the Central Act. We are concerned only with Explanation II to sub-section (o) of Section 2 of the State Act and that Explanation refers only to sub-section (2) of Section 4 and not to sub-section (1) of that section or to Section 3.

It is only sub-section (2) of section 4 which is incorporated in Explanation 11 to sub-section (o) of Section 2 of the State Act and we are called upon to considered as to what is the effect of such incorporation. The State Legislature could have very well reproduced the entire language of sub-section (2) of Section 4 bodily in Explanation II to sub-section (o) of Section 2 but it preferred to employ a simpler device by incorporating by reference the provision of sub-section (2) of Section 4 in Explanation II to sub-section (o) of Section 2. The doctrine of incorporating by reference has been succinctly explained by Lord Esher, M.R. in In re Wood's Estate ((1886) 31 Ch D 607) in the following words :

> It is to put them into the Act of 1855, just as if they had been written in to it for the first time. If a subsequently Act brings in to itself by reference some of the clauses of a former Act, the legal effect of that, as has often been held, is to write those sections into the new Act just as if they had been actually written in it with the pen, or printed in it, and the moment you have those clauses in the later Act, you have no occasion to refer to the former Act at all.

This court also explained the doctrine of incorporation by reference in similar terms in Shamrao V. Parulekar v. District Magistrate, Thana (AIR 1952 SC 324 : 1952 SCR 683 : 1952 SCJ 476) when this Court observed :

> The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out sop that thereafter there is no need to refer to the amending Act at all. This is the rule in England : see Craies on Statute Law, 5th Edition, Page 207; it is the law in America : see Crawford on Statutory Construction, page 110; and it is the law which the Privy Council applied to India in

Keshoram Poddar v. Nundo Lal Mallick ((1926-27) 54 IA 152 (PC), 155).

We must therefore proceed to interpret Explanation 11 to sub-section (o) of Section 2 as if sub-section (2) of Section 4 were written out verbatim in the Explanation and once sub-section (2) of the Section 4 is written out in the Explanation there is no occasion or need to refer to the Central Act from which this incorporation is made or to its, purpose or context. We need not therefore allow ourselves to be oppressed by the opening words "Subjects to the provision contained in Section 3" in sub-section (1) of Section 4 or by the context in which Section 4 occurs in the Central Act.

10. We must accordingly read Explanation II to sub-section (o) of Section 2 of the State Act as if sub-section (2) of Section 4 of the Central Act were written into it and then proceed to apply the Explanation to the facts of the present case in order to determine whether the resales effected by the assessee were sales inside the State within the meaning of the Explanation. Now it was not disputed on behalf of Department that at the time when the contracts of resale were made by the assessee the goods were specific ascertained goods lying at Bhawani Mandi inside the State and if that be so, the resale effected by the assessee must be deemed to have taken place inside the State on the principles laid down in sub-section (2) of Section 4 of the Central Act as incorporated in Explanation II to sub-section (o) of the Section 2 of the State Act. It did not make any difference to this position that the resales in the course of inter-state trade or commerce. The only consequence of the resales being sales in the course of inter-State trade or commerce was that they were not taxable under the State legislation. But there is no provision in the State Act which requires that in order that an assessee may be exempt from purchase tax in respect of goods made by him against a Declaration in Form No. St 17, he must resell the goods with in the State in such a manner that such resale becomes exigible to tax under the State legislation. We had occasion to consider a similar question in Polestar Electronic (Pvt.) Ltd. v. Addl. Commissioner, Sales Tax ((1978) 1 SCC 636 : 1978 SCC (Tax) 68 : AIR 1978 SC 897 : (1978) 2 SCJ 601) where we pointed out in relation to the Bengal Finance (Sales Tax) Act, 1941 as applicable in Delhi that the words "for resale by him" included not only resale in Delhi but the also the outside Delhi even of no tax included not only resale in Delhi but also outside Delhi. But apart from the facts that it makes no difference that the legislation it may be possible to contend that such resales were taxable under the Central Act and if that be so a substantial part of the tax recover under the Central Act would go to the state to augment its revenues.

11. We are therefore of the view that the assessee resold the goods the State as mentioned in the Declarations in Form No. ST 17 furnished by the assessee to the selling dealers and it cannot be said that the assessee used the goods for a purpose other than that mentioned in Declarations. We must therefore allow these appeals and set aside the assessments made on each assessee to the extent that the assessments sought to include in the taxable in the turnover the purchase price paid by the assessee in respect of the goods purchased against Declarations in Form No. ST 17 furnished to the selling dealers. The respondents will pay to the assessee in each appeal costs throughout including the costs of the appeal.

</html